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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VLADAN MIJAILOVIC

Appeal 2009-004509
Application 10/626,110
Technology Center 3600

Decided: December 3, 2009

Before WILLIAM F. PATE, III, LINDA E. HORNER, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Vladan Mijailovic (Appellant) seeks our review under 35 U.S.C.
§ 134 of the final rejection of claims 1-8. We have jurisdiction under 35
U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellant's claimed invention is directed to a camera mount for holding a hand-held video recorder steady (Spec. 1:4-7).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A system for holding a hand-held video camera steady during its movement while recording, said system comprising
 - a) a support platform to which the video camera is secured;
 - b) a support shaft connected to a bottom surface of said platform;
 - c) a sphere affixed to an upper portion of said support shaft;
 - d) a socket plate member which pivotally captures said sphere in a socket formed therein, said socket plate freely pivoting about said sphere at all times;
 - e) a balance plate connected to a bottom portion of said support shaft to help counterbalance a weight of the camera;
 - f) means attachable to said socket plate member by which said support platform and the video camera are suspended;whereby when the platform support with the camera supported thereon is transported during video recording using the means attachable to said socket plate member, the camera is maintained in a steady position by a gravitational force.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Donohue	US 4,953,852	Sep. 4, 1990
Reese	US 6,119,995	Sep. 19, 2000
Wu	US 6,729,778	May 4, 2004

The following rejections by the Examiner are before us for review:

1. Claims 1-8 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement.
2. Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 1-4 and 6-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reese in view of Wu.
4. Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Reese in view of Wu, and further in view of Donohue.

ISSUES

The issues before us are: (1) whether the Examiner erred in concluding that claims 1-8 contain subject matter which was not described in the Specification in such a way as to enable a person having ordinary skill in the art to make and/or use the invention (App. Br. 2), (2) whether the Examiner erred in concluding that claims 1-8 are indefinite (App. Br. 3), and (3) whether the Examiner erred in finding that the combined teaching of Reese and Wu describe a balance plate as called for in claim 1 (App. Br. 4).

ANALYSIS

Rejection of claims 1-8 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement

It is by now well-established law that the test for compliance with the enablement requirement in the first paragraph of 35 U.S.C. § 112 is whether the disclosure, as filed, is sufficiently complete to enable one of ordinary skill in the art to make and use the claimed invention without undue experimentation. *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988).

The PTO bears the initial burden when rejecting claims for lack of enablement, that is, the PTO bears an initial burden of setting forth a reasonable explanation as to why it believes that the scope of protection provided by that claim is not adequately enabled by the description of the invention provided in the specification of the application. *In re Wright*, 999 F.2d 1557, 1561-62 (Fed. Cir. 1993).

Claim 1, section *d* calls for “a socket plate member which pivotally captures said sphere in a socket formed therein, said socket plate freely pivoting about said sphere *at all times*” (emphasis added).

Appellant admits that the claimed limitation “at all times” does not appear in the Specification (App. Br. 2). Appellant contends, however, that the Specification’s support for claim limitations does not have to be provided in the exact same words called for in the claims (App. Br. 2). Appellant still further contends that since Appellant’s invention “lacks any means to lock the support platform [*sic*, socket plate member 42] relative to the sphere [*sic*, spherical ball 40], it is clear it [*sic*, the socket plate member 42] is free to pivot relative thereto ‘at all times.’” (App. Br. 3).

The Examiner concluded that “[t]he specification does not specifically address as to what is meant by ‘at all times’ in such a way that one of ordinary skill may make or use the invention.” (Ans. 3). The Examiner found that the claim language “free pivoting at all times” [*sic*, “freely pivoting . . . at all times”] alludes to the “timing” of an event that has not been described in the Specification in such a way as to enable one of ordinary skill in the art to make or use the device (Ans. 6).

We agree with Appellant that the Specification’s support for claim limitations does not have to be provided in the exact same words called for in the claims. However, Appellant’s disclosure (Specification, claims and/or drawings) must provide sufficient description to enable one skilled in the art to make and use “said socket plate freely pivoting about said sphere at all times” as called for in claim 1, section *d*.

Appellant’s Specification describes that the “[s]pherical ball 40 is preferably made of self-lubricating material . . . Spherical ball 40 call [*sic*, can] freely rotate in socket plate 42 about the ‘z’ (or yaw) axis freely turning about the z-axis through 360°.” (Spec. 5:5-13).

Accordingly, in view of the Appellant’s disclosure of a self-lubricating spherical ball 40 freely rotating in socket plate 42, a person having ordinary skill in the art would understand that the claim limitation “at all times” (claim 1, section *d*) means that the spherical ball is freely rotatable in the socket plate and is incapable of being locked relative to the socket plate.

In light of our claim interpretation, we find that the Examiner has not met his burden of setting forth a reasonable explanation as to why he believes that the scope of protection provided by that claim is not adequately

enabled by the description of the invention provided in the specification of the application.

Therefore, we conclude that Appellant has demonstrated that the Examiner erred in rejecting claim 1 as failing to comply with the enablement requirement of 35 U.S.C. § 112. Appellant has likewise demonstrated error in the Examiner's rejection of claims 2-8, which depend from claim 1.

Rejection of claims 1-8 under 35 U.S.C. § 112, second paragraph, as being indefinite

Appellant contends that the claim limitation "at all times" (claim 1, section *d*) is clear and definite (App. Br. 3).

The Examiner concluded (1) that it is unclear what is meant by the word "times" in the claim limitation "at all times," and (2) it is unclear how "timing" pertains to the structure of the device (Ans. 3, 7).

As we previously stated in regard to the rejection under 35 U.S.C. § 112, first paragraph, a person having ordinary skill in the art would understand that the claim limitation "at all times" (claim 1, section *d*) means that the spherical ball is freely rotatable in the socket plate and is incapable of being locked relative to the socket plate.

Thus, we find that claim 1 is not indefinite under § 112, second paragraph.

Therefore, we conclude that Appellant has demonstrated that the Examiner erred in rejecting claim 1 as being indefinite under 35 U.S.C. § 112, second paragraph. Appellant has likewise demonstrated error in the Examiner's rejection of claims 2-8, which depend from claim 1.

Prior Art Rejection

Appellant contends that the combined teaching of Reese and Wu do not describe a balance plate as called for in claim 1 (App. Br. 4).

The Examiner found (1) that “Reese does [*sic*, does not] teach a counterbalanced socket plate member connected to a bottom of the support shaft . . .” (Ans. 5), and (2) that Wu describes, *inter alia*, a counterbalancing socket plate member 12 connected to a bottom of the support shaft 20 (Ans. 5). The Examiner concluded that “it would have been obvious to one having ordinary skill in the art . . . from the teachings of Wu . . . to have added these things to the device of Reese . . .”

Claim 1, section *e* calls for “a balance plate connected to a bottom portion of said support shaft to help counterbalance a weight of the camera.”

Reese describes a system 10 for mounting a display unit D including a threaded mounting shaft 18 (col. 3, ll. 12-31), but does not describe a balance plate or that the threaded mounting shaft 18 is connected to a balance plate to counterbalance the weight of a camera.

Wu describes a fixture for fixing a camera including a coupling device 10 (col. 1, l. 66-col. 2, l. 2). Wu’s coupling device 10 includes a first coupling member 11 and a second coupling member 12 (col. 2, ll. 3-8). Wu’s first and second coupling members 11, 12 are employed to engage with a handle bar 71 of a bike 70 (col. 2, ll. 55-59 and col. 3, ll. 9-12, and fig. 3). In their engagement with a handle bar 71 of a bike 70, Wu’s first and second coupling members 11, 12 are fixed to the handle bar 71 (col. 3, ll. 9-12) and, therefore, do not provide a counterbalance to the weight of the camera.

We find that Wu does not describe “a balance plate connected to a bottom portion of said support shaft to help counterbalance a weight of the camera” as called for in claim 1, section *e*.

Further, we find that the combined teachings of Reese and Wu do not describe “a balance plate connected to a bottom portion of said support shaft to help counterbalance a weight of the camera” as called for in claim 1, section *e*.

Therefore, we conclude that Appellant has demonstrated that the Examiner erred in rejecting claim 1 over Reese in view of Wu. Appellant has likewise demonstrated error in the Examiner’s rejection of claims 2-4 and 6-8, which depend from claim 1.

The Examiner has not relied on Donohue for any teaching that would remedy the deficiency in the combination of Reese and Wu (Ans. 5-6). We thus conclude that the Examiner also erred in rejecting claim 5 over Reese in view of Wu, and further in view of Donohue.

CONCLUSIONS

Appellant has established that the Examiner erred in concluding that claims 1-8 contain subject matter which was not described in the Specification in such a way as to enable a person having ordinary skill in the art to make and/or use the invention.

Appellant has established that the Examiner erred in concluding that claims 1-8 are indefinite.

Appellant has established that the Examiner erred in finding that the combined teaching of Reese and Wu describe a balance plate as called for in claim 1.

DECISION

The decision of the Examiner to reject claims 1-8 is reversed.

REVERSED

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